

Exhibit A



Notice of Service of Process

LYN / ALL
Transmittal Number: 26977400
Date Processed: 05/23/2023

Primary Contact: Bruce Buttarro; Hm Office Lgl SOP Paralegal
Liberty Mutual Insurance Company
175 Berkeley St
Boston, MA 02116-5066

Entity:	LM General Insurance Company Entity ID Number 2538012
Entity Served:	Lm General Insurance Company
Title of Action:	Timothy Grant vs. LM General Insurance Company
Matter Name/ID:	Timothy Grant vs. LM General Insurance Company (14104916)
Document(s) Type:	Complaint
Nature of Action:	Class Action
Court/Agency:	Allegheny County Court of Common Pleas, PA
Case/Reference No:	GD-23-006382
Jurisdiction Served:	Massachusetts
Date Served on CSC:	05/23/2023
Answer or Appearance Due:	Other/NA
Originally Served On:	CSC
How Served:	Personal Service
Sender Information:	Shenkan Injury Lawyers, LLC. Not Shown

Notes: The document matches the original as it was received. All pages served are included in the image. No Summons was served with Complaint.

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COVER SHEET

[cover]

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

TIMOTHY GRANT, individually and on	:	
behalf of all others similarly situated,	:	CIVIL ACTION
	:	
Plaintiffs,	:	
	:	CLASS ACTION
vs.	:	
	:	No.
LM GENERAL INSURANCE	:	
COMPANY,	:	
	:	
Defendant.	:	

CLASS ACTION COMPLAINT

Representative Plaintiff Timothy Grant, individually and on behalf of all others similarly situated (“Plaintiff”), hereby files this Class Action Complaint against LM General Insurance Company (“Defendant” or “LM”), and alleges as follows:

INTRODUCTION

1. Plaintiff brings this class action on behalf of himself and similarly situated people who have had their underinsured motorist coverage (“UIM”) claims denied because of the so-called “regular use exclusion.”

2. The “regular use exclusion” has been used by insurance companies such as Defendant to deny UIM coverage when an insured suffers injuries arising from the use of a motor vehicle that he/she regularly uses, does not own, and the motor vehicle is not insured for uninsured or UIM coverage under the policy.

3. The Pennsylvania Superior Court has ruled that the regular use exclusion conflicts with the Pennsylvania Motor Vehicle Financial Responsibility Law (“MVFRL”), thus it is unenforceable.

4. Despite this, Defendant has in the past and continues to deny UIM claims in Pennsylvania based on the regular use exclusion, and refuses to reverse prior denials based on its regular use exclusion.

PARTIES

5. Timothy Grant is an adult individual who resides at 1024 Duss Avenue, Ambridge, PA 15003.

6. LM General Insurance Company is an insurance company with its headquarters at 175 Berkeley St., Garlock 10B, Boston, MA 02117.

7. At all relevant times, LM was engaged in the practices of providing and/or underwriting motor vehicle liability policies in Pennsylvania, including UIM coverage.

FACTS

8. Plaintiff was injured in an auto accident on August 10, 2021.

9. The accident was caused by an underinsured driver.

10. The limits of the underinsured driver's policy of insurance were insufficient to compensate Plaintiff for injuries he sustained as a result of the accident.

11. At the time of the accident, Plaintiff was driving a dump truck owned by his employer in the scope of his employment, which he used on a regular basis.

12. Plaintiff had a motor vehicle insurance policy with LM, Policy Number AOS28819826470, which was in effect at the time of the aforesaid accident (the "LM Policy"). The LM Policy includes UIM benefits.

13. The LM Policy states in part:

UNDERINSURED MOTORISTS COVERAGE - PENNSYLVANIA
(NON-STACKED)

...

INSURING AGREEMENT

A. We will pay compensatory damages which an "insured" is legally entitled to recover from the owner or operator of an "underinsured motor vehicle" because of "bodily injury":

1. Sustained by an "insured"; and
2. Caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the "underinsured motor vehicle".

...

B. "Insured" as used in this endorsement means:

1. You or any "family member".

14. Plaintiff made a claim for UIM benefits under the aforesaid LM Policy.

15. LM denied coverage for Plaintiff's UIM claim on the basis of Exclusion A.2. of the

LM insurance policy, which states:

A. We do not provide Underinsured Motorists Coverage for "bodily injury" sustained:

2. By an "insured", as defined in this endorsement, while using, "occupying", or when struck by, any non-owned motor vehicle that is furnished or made available for your regular use, or the regular use of a "family member", which is not insured for Underinsured Motorists Coverage under this policy. This includes a trailer of any type used with that vehicle.

(hereafter "LM's Regular Use Exclusion")

16. Absent LM's Regular Use Exclusion, Plaintiff would have been entitled to UIM benefits from LM pursuant to the LM Policy and 75 Pa.C.S. §1731(c).

17. Prior to the time of LM's denial, the Pennsylvania Superior Court found that the general use exclusion conflicts with Section 1731(c) of the MVFRL It is, therefore, unenforceable.

Rush v. Erie Ins. Exchange, 265 A.3d 794 (Pa. Super. Ct. 2021).¹

¹ *Rush* is currently on appeal to the Supreme Court of Pennsylvania. *Rush* is valid precedential Pennsylvania common law. *In re Townsend's Estate*, 36 A.2d 438, 441 (Pa. 1944); *Jones v. Erie Insurance Exchange*, 282 A.3d 1139 (Pa. Super. Ct. 2022); *Johnson v. Progressive Advanced Insurance Company*, 587 F.Supp.3d 277 (2022).

18. Defendant was aware of the *Rush* case at the time it wrongly denied Plaintiff's claim.

19. Thereafter, on two (2) separate occasions, Plaintiff's attorneys requested a reconsideration of LM's decision to deny UIM coverage, on the basis that *Rush* is valid common law and, therefore, LM's regular use exclusion is unenforceable in Pennsylvania.

20. Defendant, through its attorneys, denied both requests.

21. Despite knowing of the existence of the *Rush* decision and that it is valid common law, LM has continued to use the general use exclusion to deny UIM benefits to its insureds, and has failed to revoke its previous denials of UIM benefit claims based on the regular use exclusion.

CLASS ALLEGATIONS

22. Plaintiff brings this action on behalf of himself and all others similarly situated pursuant to Fed.R.Civ.P. 23(a) and 23(b)(1), (2), and (3).

23. Plaintiff proposes a Class defined as: All people who were insured under a LM General Insurance Company motor vehicle insurance policy in Pennsylvania and made a claim, during the Applicable Statute of Limitations, to LM General Insurance Company for bodily injury UIM benefits but their claims were denied by LM because of a UIM policy exclusion the same or substantively similar to the following:

We do not provide Underinsured Motorists Coverage for "bodily injury" sustained by an "insured", as defined in this endorsement, while using, "occupying", or when struck by, any non-owned motor vehicle that is furnished or made available for your regular use, or the regular use of a "family member", which is not insured for Underinsured Motorists Coverage under this policy. This includes a trailer of any type used with that vehicle.

24. Subject to amendment, the Applicable Statute of Limitations is as follows:

- Breach of Contract Claim - October 22, 2017 through Class Certification; and
- Bad Faith and Breach of Fiduciary Duty Claims - October 22, 2019 through Class Certification.

25. Statute of limitations periods are computed from the time the cause of action accrued, which is when the plaintiff could have first maintained the action to a successful conclusion.² At a minimum, Plaintiff and Class Members could have first maintained their action to a successful conclusion when the Superior Court decided *Rush* on October 22, 2021.

26. Under Pennsylvania's discovery rule, a statute of limitations is tolled until the complaining party knows or reasonably should know that they have been injured and that his injury has been caused by another party's conduct.³ Again, Plaintiff and Class Members could not have known they had been injured (i.e., that LM's denial was a violation of Pennsylvania law), until the *Rush* decision. Therefore, Plaintiff and Class Members' statutes of limitations began to run on October 22, 2021 or, potentially, earlier.

27. Plaintiff reserves the right to amend this class definition, including adding classes and subclasses, and the class period, after discovery.

28. The class is so numerous that joinder of all Class Members is impractical.

29. The size of the class, and any trial, would be readily manageable.

30. There are questions of law or fact common to the class that predominate. These include, though are not limited to, the following:

(a) Whether LM rejected the class members' UIM benefits claims based on the regular use exclusion;

(b) Whether this rejection was a breach of contract and/or constituted bad faith and/or was a breach of LM's fiduciary duty;

31. Defendant has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class.

² *City of Philadelphia v. Lead Indus. Ass'n, Inc.*, 994 F.2d 112, 121 (3d Cir. 1993).

³ *Schmidt v. Skolas*, 770 F.3d 241, 251 (3d Cir. 2014).

32. Plaintiff and the Class Members have substantive claims that are similar, if not identical, in all material respects, and will require proof of the same kind and application of the same laws.

33. Plaintiff's claims are typical of those of the class. All are based on the same factual and/or legal theories. Plaintiff and Class Members all suffered damages as a result of LM's denial of their UIM claims.

34. Plaintiff will fairly and adequately represent and protect the interests of the class.

35. Plaintiff is represented by competent and experienced counsel.

36. Plaintiff has no conflict with class members in the maintenance of this action, and his respective claims are identical to or at least typical of claims of the Class Members.

37. Because most Class Members either do not know that their rights have been violated, and/or could not economically justify the effort and expense required to litigate their individual claims or have little interest in or ability to prosecute an individual action due to the complexity of the issues involved in this litigation, a class action is the most efficient proceeding.

38. A class action is superior to other available means for the fair and efficient adjudication of this controversy since individual joinder of all Class Members is impracticable. This class action represents the most fair and efficient method of adjudicating this controversy.

39. There are no unusual legal or factual issues that would cause management problems not normally and routinely handled in class actions.

40. The questions of law and fact common to the class predominate over any questions affecting only individual members.

41. If each of the Class Members were forced to bring individual suits, such suits would burden judicial resources and would create the risk of multiple inconsistent results for similarly

situated parties. A class action will serve the goals of judicial economy and ensure uniformity of decision.

Count One
Breach of Contract

42. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

43. Plaintiff's and Class Members' motor vehicle liability policies with LM are contracts.

44. Plaintiffs and Class Members made claims for UIM benefits under their motor vehicle insurance policies with LM.

45. Defendant denied Plaintiff's and the Class Members' claims for UIM benefits based on LM's Regular Use Exclusion, which the Pennsylvania Superior Court has held to be unenforceable.

46. Plaintiffs and Class Members were entitled to have their claims for UIM benefits granted, based on standardized insurance policies with LM.

47. By denying Plaintiff's and Class Members' claims, and refusing to reverse denials of their claims, LM breached its contracts with them, and breached its implied covenant of good faith and fair dealing, resulting in monetary damages.

Count Two
Statutory and Common Law Bad Faith

48. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

49. LM did not have a reasonable basis to deny Plaintiff's and Class Members' UIM claims based on a regular use exclusion because the Superior Court of Pennsylvania has held that such an exclusion is unenforceable in Pennsylvania.

50. LM knew of and recklessly disregarded its lack of a reasonable basis to deny these valid claims for Plaintiff and Class Members.

51. LM and its counsel knew of the *Rush* decision, and Plaintiff's counsel informed LM that *Rush* is the controlling Pennsylvania law.

52. Despite Plaintiff's efforts to implore LM to provide coverage, LM continued to deny Plaintiff's and Class Member's UIM claims based on LM's regular use exclusion, and failed to reverse its previous denials of UIM claims which it denied based on the unenforceable exclusion.

53. LM's systemic denial of these valid claims were made in bad faith, in an unreasonable effort to contest such valid claims with the intent to generate more profit.

54. A reasonable investigation would have determined that, on the basis of a change in the law, LM must provide coverage for these claims.

55. At all relevant times, LM's actions toward Plaintiff and Class Members constituted bad faith.

Count Three
Breach of Fiduciary Duty

56. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

A. Compensatory Damages

57. At all relevant times, LM, as their insurer, owed Plaintiff and the Class Members a fiduciary duty to act in good faith and due care and in their best interest.

58. Defendant's denial of Plaintiff's and Class Members' insurance claims based on LM's Regular Use Exclusion, when LM knew that the regular use exclusion was unenforceable in Pennsylvania, constitutes breach of LM's fiduciary duty to Plaintiff and Class Members, who have suffered compensatory damages as a result.

B. Punitive Damages

59. Defendant's calculated decision not to revoke its mass denials of Plaintiff's and Class Members' insurance claims, which it denied before *Rush*, resulted in a breach of LM's fiduciary

duty to Plaintiff and Class Members, maliciously subordinating the interests of its insureds in favor of its own.

60. Defendant's motivation to deny these valid claims is based upon its incentive to increase profits, in known disregard to its fiduciary duty to its insureds.

61. Defendant knew or had reason to know these denials were not made in good faith and created the likelihood of a high risk of harm to its insureds and deliberately acted in conscious disregard of that known risk.

62. Defendant's conduct averred herein constitutes willful and wanton conduct, and/or shows a conscious disregard of the rights of Plaintiff and Class Members, that has a great probability of causing substantial harm, justifying the imposition of punitive damages.

WHEREFORE, Plaintiff requests that this Honorable Court:

- A. Award compensatory damages for the injuries suffered by Plaintiff and Class Members for all Counts;
- B. Award punitive damages for Counts 2 and 3;⁴
- C. Award attorneys' fees, costs, punitive damages, interest from the date the UIM claim was made equal to the prime interest rate plus 3%, and payment of costs and expenses for Count 2; and,
- D. Any other relief that this Honorable Court deems just and proper.

Respectfully submitted,
SHENKAN INJURY LAWYERS, LLC.
/s/ Richard Shenkan
Richard Shenkan

Co-Counsel for Plaintiffs

STRASSBURGER McKENNA GUTNICK
& GEFSKY
David A. Strassburger
Lydia A. Gorba

Co-Counsel for Plaintiffs

⁴ See *Trotman v. Mecchella*, 618 A.2d 982, 985 (Pa. Super. Ct. 1992) and *Anderson v. Nationwide Insurance Enterprise, et al.*, 187 F.Supp. 2d 447 (2002) ("Under Pennsylvania law, the question of punitive damages is usually determined by the trier of fact, and the Court is to decide the issue only when no reasonable inference from the facts alleged supports a punitive award.").

Approval Details

***Please be advised that dockets have been accepted by the
Allegheny County Department of Court Records, Civil/Family Division for Case Number:GD-23-006382
Dockets filed for Temporary Case Number:TMP1345284
have been assigned to Permanent Case number:GD-23-006382***

Submission ID:	2574615
Status:	Approved
Case Number:	GD-23-006382
Case Description:	Grant vs LM General Insurance
Filing Date/Time:	5/19/2023 6:17:57 PM

Docket Details are as follows:

ClientID	Filed By	Sequence nbr	Docket Type Code	Docket Type	Fees
	79800	1	COMPL	Complaint	191.75

Payment Type : Credit Card

(There will be an additional 4% service charge on all Credit Card e-filings by the merchant card provider)

Civil/Family Division Amount :191.75

Sheriff's Amount :

Total Amount :191.75

Receipt NO :8683234

The Department of Court Records will not be assigning court dates to Arbitration matters as per Administrative Order AD-20-000095-PJ which was filed on March 16, 2020. Once the court resumes normal operations and the stay is lifted the Attorney/Litigant will be required to file a "Praecipe to Schedule an Arbitration Date" in order to receive a hearing date.

*****contact civil@alleghenycounty.us within 10 days on any issues *****

Thank you for using the DCR, Civil/Family Division Electronic Filing and Retrieval System.

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Notice of Service of Process

LYN / ALL
Transmittal Number: 27092857
Date Processed: 06/13/2023

Primary Contact: Bruce Buttarro; Hm Office Lgl SOP Paralegal
Liberty Mutual Insurance Company
175 Berkeley St
Boston, MA 02116-5066

Entity:	LM General Insurance Company Entity ID Number 2538012
Entity Served:	LM General Insurance Company
Title of Action:	Timothy Grant vs. LM General Insurance Company
Matter Name/ID:	Timothy Grant vs. LM General Insurance Company (14104916)
Document(s) Type:	Complaint
Nature of Action:	Class Action
Court/Agency:	Allegheny County Court of Common Pleas, PA
Case/Reference No:	GD-23-006382
Jurisdiction Served:	Massachusetts
Date Served on CSC:	06/12/2023
Answer or Appearance Due:	Other/NA
Originally Served On:	CSC
How Served:	Certified Mail
Sender Information:	Shenkan Injury Lawyers, LLC 248-562-1320

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6550 Lakeshore St., West Bloomfield, MI 48323
Phone: (248) 562-1320 • Fax: (888) 769-1774
rshenkan@shenkanlaw.com

June 5, 2023

Via Certified Mail

Corporation Service Company
84 State St.
Boston, MA 02109

RE: *Timothy Grant, et al., v. LM General Insurance Company*
Court of Common Pleas of Allegheny County, Case NO. GD-23-006382

Dear Sir/Madam:

In connection with the above-referenced matter, enclosed please find the following:

➤ Complaint.

Should you have any questions, please call me at (248) 562-1320. Thank you for your attention and courtesy to this matter.

Sincerely,
SHENKAN INJURY LAWYERS, LLC.
/s/ Richard Shenkan
Richard Shenkan
Attorney for Plaintiffs

Enclosure

RS/ls

Approval Details

**Please be advised that dockets have been accepted by the
Allegheny County Department of Court Records, Civil/Family Division for Case Number:GD-23-006382
Dockets filed for Temporary Case Number:TMP1345284
have been assigned to Permanent Case number:GD-23-006382**

Submission ID:	2574615
Status:	Approved
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Case Description:	Grant vs LM General Insurance
Filing Date/Time:	5/19/2023 6:17:57 PM

Docket Details are as follows:

ClientID	Filed By	Sequence nbr	Docket Type Code	Docket Type	Fees
	79800	1	COMPL	Complaint	191.75

ayment Type : Credit Card

There will be an additional 4% service charge on all Credit Card e-filings by the merchant card provider)

ivil/Family Division Amount :191.75

heriff's Amount :

otal Amount :191.75

ceipt NO :8683234

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

TIMOTHY GRANT, individually and on	:	
behalf of all others similarly situated,	:	CIVIL ACTION
	:	
Plaintiffs,	:	
	:	CLASS ACTION
vs.	:	
	:	No.
LM GENERAL INSURANCE	:	
COMPANY,	:	
	:	
Defendant.	:	

CLASS ACTION COMPLAINT

Representative Plaintiff Timothy Grant, individually and on behalf of all others similarly situated (“Plaintiff”), hereby files this Class Action Complaint against LM General Insurance Company (“Defendant” or “LM”), and alleges as follows:

INTRODUCTION

1. Plaintiff brings this class action on behalf of himself and similarly situated people who have had their underinsured motorist coverage (“UIM”) claims denied because of the so-called “regular use exclusion.”

2. The “regular use exclusion” has been used by insurance companies such as Defendant to deny UIM coverage when an insured suffers injuries arising from the use of a motor vehicle that he/she regularly uses, does not own, and the motor vehicle is not insured for uninsured or UIM coverage under the policy.

3. The Pennsylvania Superior Court has ruled that the regular use exclusion conflicts with the Pennsylvania Motor Vehicle Financial Responsibility Law (“MVFRL”), thus it is unenforceable.

4. Despite this, Defendant has in the past and continues to deny UIM claims in Pennsylvania based on the regular use exclusion, and refuses to reverse prior denials based on its regular use exclusion.

PARTIES

5. Timothy Grant is an adult individual who resides at 1024 Duss Avenue, Ambridge, PA 15003.

6. LM General Insurance Company is an insurance company with its headquarters at 175 Berkeley St., Garlock 10B, Boston, MA 02117.

7. At all relevant times, LM was engaged in the practices of providing and/or underwriting motor vehicle liability policies in Pennsylvania, including UIM coverage.

FACTS

8. Plaintiff was injured in an auto accident on August 10, 2021.

9. The accident was caused by an underinsured driver.

10. The limits of the underinsured driver's policy of insurance were insufficient to compensate Plaintiff for injuries he sustained as a result of the accident.

11. At the time of the accident, Plaintiff was driving a dump truck owned by his employer in the scope of his employment, which he used on a regular basis.

12. Plaintiff had a motor vehicle insurance policy with LM, Policy Number AOS28819826470, which was in effect at the time of the aforesaid accident (the "LM Policy"). The LM Policy includes UIM benefits.

13. The LM Policy states in part:

UNDERINSURED MOTORISTS COVERAGE - PENNSYLVANIA
(NON-STACKED)

...

INSURING AGREEMENT

A. We will pay compensatory damages which an "insured" is legally entitled to recover from the owner or operator of an "underinsured motor vehicle" because of "bodily injury":

1. Sustained by an "insured"; and
2. Caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the "underinsured motor vehicle".

...

B. "Insured" as used in this endorsement means:

1. You or any "family member".

14. Plaintiff made a claim for UIM benefits under the aforesaid LM Policy.

15. LM denied coverage for Plaintiff's UIM claim on the basis of Exclusion A.2. of the

LM insurance policy, which states:

A. We do not provide Underinsured Motorists Coverage for "bodily injury" sustained:

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2. By an "insured", as defined in this endorsement, while using, "occupying", or when struck by, any non-owned motor vehicle that is furnished or made available for your regular use, or the regular use of a "family member", which is not insured for Underinsured Motorists Coverage under this policy. This includes a trailer of any type used with that vehicle.

(hereafter "LM's Regular Use Exclusion")

16. Absent LM's Regular Use Exclusion, Plaintiff would have been entitled to UIM benefits from LM pursuant to the LM Policy and 75 Pa.C.S. §1731(c).

17. Prior to the time of LM's denial, the Pennsylvania Superior Court found that the general use exclusion conflicts with Section 1731(c) of the MVFRL It is, therefore, unenforceable. *Rush v. Erie Ins. Exchange*, 265 A.3d 794 (Pa. Super. Ct. 2021).¹

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18. Defendant was aware of the *Rush* case at the time it wrongly denied Plaintiff's claim.

19. Thereafter, on two (2) separate occasions, Plaintiff's attorneys requested a reconsideration of LM's decision to deny UIM coverage, on the basis that *Rush* is valid common law and, therefore, LM's regular use exclusion is unenforceable in Pennsylvania.

20. Defendant, through its attorneys, denied both requests.

21. Despite knowing of the existence of the *Rush* decision and that it is valid common law, LM has continued to use the general use exclusion to deny UIM benefits to its insureds, and has failed to revoke its previous denials of UIM benefit claims based on the regular use exclusion.

CLASS ALLEGATIONS

22. Plaintiff brings this action on behalf of himself and all others similarly situated pursuant to Fed.R.Civ.P. 23(a) and 23(b)(1), (2), and (3).

23. Plaintiff proposes a Class defined as: All people who were insured under a LM General Insurance Company motor vehicle insurance policy in Pennsylvania and made a claim, during the Applicable Statute of Limitations, to LM General Insurance Company for bodily injury UIM benefits but their claims were denied by LM because of a UIM policy exclusion the same or substantively similar to the following:

We do not provide Underinsured Motorists Coverage for "bodily injury" sustained by an "insured", as defined in this endorsement, while using, "occupying", or when struck by, any non-owned motor vehicle that is furnished or made available for your regular use, or the regular use of a "family member", which is not insured for Underinsured Motorists Coverage under this policy. This includes a trailer of any type used with that vehicle.

24. Subject to amendment, the Applicable Statute of Limitations is as follows:

- Breach of Contract Claim - October 22, 2017 through Class Certification; and
- Bad Faith and Breach of Fiduciary Duty Claims - October 22, 2019 through Class Certification.

25. Statute of limitations periods are computed from the time the cause of action accrued, which is when the plaintiff could have first maintained the action to a successful conclusion.² At a minimum, Plaintiff and Class Members could have first maintained their action to a successful conclusion when the Superior Court decided *Rush* on October 22, 2021.

26. Under Pennsylvania's discovery rule, a statute of limitations is tolled until the complaining party knows or reasonably should know that they have been injured and that his injury has been caused by another party's conduct.³ Again, Plaintiff and Class Members could not have known they had been injured (i.e., that LM's denial was a violation of Pennsylvania law), until the *Rush* decision. Therefore, Plaintiff and Class Members' statutes of limitations began to run on October 22, 2021 or, potentially, earlier.

27. Plaintiff reserves the right to amend this class definition, including adding classes and subclasses, and the class period, after discovery.

28. The class is so numerous that joinder of all Class Members is impractical.

29. The size of the class, and any trial, would be readily manageable.

30. There are questions of law or fact common to the class that predominate. These include, though are not limited to, the following:

(a) Whether LM rejected the class members' UIM benefits claims based on the regular use exclusion;

(b) Whether this rejection was a breach of contract and/or constituted bad faith and/or was a breach of LM's fiduciary duty;

31. Defendant has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class.

² *City of Philadelphia v. Lead Indus. Ass'n, Inc.*, 994 F.2d 112, 121 (3d Cir. 1993).

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34. Plaintiff will fairly and adequately represent and protect the interests of the class.

35. Plaintiff is represented by competent and experienced counsel.

36. Plaintiff has no conflict with class members in the maintenance of this action, and his respective claims are identical to or at least typical of claims of the Class Members.

37. Because most Class Members either do not know that their rights have been violated, and/or could not economically justify the effort and expense required to litigate their individual claims or have little interest in or ability to prosecute an individual action due to the complexity of the issues involved in this litigation, a class action is the most efficient proceeding.

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39. There are no unusual legal or factual issues that would cause management problems not normally and routinely handled in class actions.

40. The questions of law and fact common to the class predominate over any questions affecting only individual members.

41. If each of the Class Members were forced to bring individual suits, such suits would burden judicial resources and would create the risk of multiple inconsistent results for similarly

situated parties. A class action will serve the goals of judicial economy and ensure uniformity of decision.

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Breach of Contract

42. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

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44. Plaintiffs and Class Members made claims for UIM benefits under their motor vehicle insurance policies with LM.

45. Defendant denied Plaintiff's and the Class Members' claims for UIM benefits based on LM's Regular Use Exclusion, which the Pennsylvania Superior Court has held to be unenforceable.

46. Plaintiffs and Class Members were entitled to have their claims for UIM benefits granted, based on standardized insurance policies with LM.

47. By denying Plaintiff's and Class Members' claims, and refusing to reverse denials of their claims, LM breached its contracts with them, and breached its implied covenant of good faith and fair dealing, resulting in monetary damages.

Count Two
Statutory and Common Law Bad Faith

48. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

49. LM did not have a reasonable basis to deny Plaintiff's and Class Members' UIM claims based on a regular use exclusion because the Superior Court of Pennsylvania has held that such an exclusion is unenforceable in Pennsylvania.

50. LM knew of and recklessly disregarded its lack of a reasonable basis to deny these valid claims for Plaintiff and Class Members.

51. LM and its counsel knew of the *Rush* decision, and Plaintiff's counsel informed LM that *Rush* is the controlling Pennsylvania law.

52. Despite Plaintiff's efforts to implore LM to provide coverage, LM continued to deny Plaintiff's and Class Member's UIM claims based on LM's regular use exclusion, and failed to reverse its previous denials of UIM claims which it denied based on the unenforceable exclusion.

53. LM's systemic denial of these valid claims were made in bad faith, in an unreasonable effort to contest such valid claims with the intent to generate more profit.

54. A reasonable investigation would have determined that, on the basis of a change in the law, LM must provide coverage for these claims.

55. At all relevant times, LM's actions toward Plaintiff and Class Members constituted bad faith.

Count Three
Breach of Fiduciary Duty

56. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

A. Compensatory Damages

57. At all relevant times, LM, as their insurer, owed Plaintiff and the Class Members a fiduciary duty to act in good faith and due care and in their best interest.

58. Defendant's denial of Plaintiff's and Class Members' insurance claims based on LM's Regular Use Exclusion, when LM knew that the regular use exclusion was unenforceable in Pennsylvania, constitutes breach of LM's fiduciary duty to Plaintiff and Class Members, who have suffered compensatory damages as a result.

B. Punitive Damages

59. Defendant's calculated decision not to revoke its mass denials of Plaintiff's and Class Members' insurance claims, which it denied before *Rush*, resulted in a breach of LM's fiduciary

duty to Plaintiff and Class Members, maliciously subordinating the interests of its insureds in favor of its own.

60. Defendant's motivation to deny these valid claims is based upon its incentive to increase profits, in known disregard to its fiduciary duty to its insureds.

61. Defendant knew or had reason to know these denials were not made in good faith and created the likelihood of a high risk of harm to its insureds and deliberately acted in conscious disregard of that known risk.

62. Defendant's conduct averred herein constitutes willful and wanton conduct, and/or shows a conscious disregard of the rights of Plaintiff and Class Members, that has a great probability of causing substantial harm, justifying the imposition of punitive damages.

WHEREFORE, Plaintiff requests that this Honorable Court:

- A. Award compensatory damages for the injuries suffered by Plaintiff and Class Members for all Counts;
- B. Award punitive damages for Counts 2 and 3;⁴
- C. Award attorneys' fees, costs, punitive damages, interest from the date the UIM claim was made equal to the prime interest rate plus 3%, and payment of costs and expenses for Count 2; and,
- D. Any other relief that this Honorable Court deems just and proper.

Respectfully submitted,
SHENKAN INJURY LAWYERS, LLC.
/s/ Richard Shenkan
Richard Shenkan

Co-Counsel for Plaintiffs

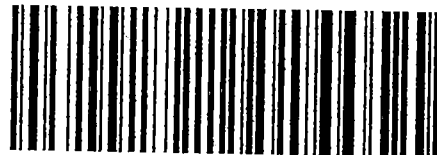
STRASSBURGER McKENNA GUTNICK
& GEFSKY
David A. Strassburger
Lydia A. Gorba

Co-Counsel for Plaintiffs

⁴ See *Trotman v. Mecchella*, 618 A.2d 982, 985 (Pa. Super. Ct. 1992) and *Anderson v. Nationwide Insurance Enterprise, et al.*, 187 F.Supp. 2d 447 (2002) ("Under Pennsylvania law, the question of punitive damages is usually determined by the trier of fact, and the Court is to decide the issue only when no reasonable inference from the facts alleged supports a punitive award.").



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**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION**

COVER SHEET

<p>Plaintiff(s)</p> <p>Timothy Grant, individually and on behalf of all others similarly situated</p>	<p>CIVIL DIVISION</p>
	<p>Case Number :</p> <p>GD - 23 - 006382</p>
	<p>Type of pleading :</p> <p>Entry of Appearance</p>
	<p>Code and Classification :</p>
	<p>Filed on behalf of</p> <p>LM General Insurance Company</p>
<p>Defendant(s)</p> <p>LM General Insurance Company</p>	<p>(Name of the filing party)</p> <p><input type="checkbox"/> Counsel of Record</p> <p><input type="checkbox"/> Individual, If Pro Se</p>
	<p>Required Information:</p> <p>Name: Brooks R. Foland, Esquire</p> <p>Address: 100 Corporate Center Drive, Suite 201</p> <p>Camp Hill, PA 17011</p> <p>Phone Number: 717-651-3714</p> <p>Email Address: brfoland@mdwcg.com</p>
	<p>Attorney's State ID : 70102</p>
	<p>Attorney's Firm ID :</p>

GD-23-006382

MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN
Brooks R. Foland, Esquire
PA I.D. No. 70102
100 Corporate Center Drive, Suite 201
Camp Hill, PA 17011
Telephone: (717) 651-3714
Email: brfoland@mdwcg.com
Attorneys for Defendant

TIMOTHY GRANT, individually and on	:	IN THE COURT OF COMMON PLEAS OF
behalf of all others similarly situated,	:	ALLEGHENY COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	Case ID No. GD-23-006382
v.	:	
	:	CIVIL ACTION – LAW
LM GENERAL INSURANCE	:	
COMPANY,	:	
Defendant	:	

ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Please enter the appearance of Brooks R. Foland, Esquire as counsel of record for **LM General Insurance Company** in the above-captioned matter.

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

Date: 06/16/2022

BY: 
Brooks R. Foland, Esquire
PA I.D. No. 70102
100 Corporate Center Drive, Suite 201
Camp Hill, PA 17011
Telephone: (717) 651-3714
Facsimile: (717) 651-3707
Attorneys for Defendant

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Record Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: _____ Defendant

Signature: BRF

Name: Brooks R. Foland, Esquire

Attorney No. (if applicable): 70102

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing document upon the person(s) and in the manner indicated below, which service satisfies the requirements of the Pennsylvania Rules of Civil Procedure, by ECF, email and/or depositing a copy of same in the United States Mail, first-class postage prepaid, addressed as follows:

Richard Shenkan, Esquire
Shenkan Injury Lawyers, LLC.
6550 Lakeshore Street
West Bloomfield, MI 48323
Attorney for Plaintiffs

David A. Strassburger, Esquire
Lydia A. Gorba, Esquire
Strassburger McKenna Gutnick & Gefsky
Four Gateway Center
444 Liberty Avenue #2200
Pittsburgh, PA 15222
dstrassburger@smgglaw.com
lgorba@smgglaw.com
Attorney for Plaintiffs

**MARSHALL, DENNEHEY, WARNER
COLEMAN & GOGGIN**

Dated: 06/16/2023



Brooks R. Foland, Esquire